

HR 12004

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STATEMENT BEFORE THE FOREIGN OPERATIONS  
AND GOVERNMENT INFORMATION SUBCOMMITTEE  
OF THE HOUSE COMMITTEE ON GOVERNMENT  
OPERATIONS

By James C. Goodale  
Executive Vice President  
The New York Times  
August 1, 1974

Thank you. I am delighted to appear here today to present the views of The New York Times with respect to amendments that have been proposed to the Freedom of Information Act. Mr. Harding F. Bancroft, Vice Chairman of The Times, has previously set forth before the Senate subcommittees on Intergovernmental Relations, Separation of Powers, and Administrative Practices and Procedure, the unhappy experiences of The Times as of April 1, 1973 under the

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Freedom of Information Act. To avoid duplication, I would like, with the committee's permission, to have his remarks included in the record.

THE TIMES' EXPERIENCE UNDER E.O. 11652

Executive Order 11652 became effective on June 1, 1972. The order called for the automatic declassification of most documents within no more than 10 years. Certain materials were exempted, but the public was given the right to request a mandatory review of these cases.

On June 4, 1972, The Times sent out the first of the 51 declassification requests we eventually directed to 5 government agencies. All the material we requested was at least 10 years old, and in many cases much older than that.

After months of persistent effort to surmount an ingeniously-designed series of bureaucratic obstacles, we finally obtained favorable action on 5 of our 51 requests, or just under 10%. I have here a complete chronology of those requests, which I should also like to make part of the record. They are described in greater detail in Mr. Bancroft's earlier statement.

Originally, The Times was hopeful that Executive Order 11652 would help to carry out President Nixon's announced intention to "lift the veil of secrecy which now enshrouds altogether too many papers written by employes of the Federal establishment". We assigned one of our senior Washington reporters to spend full

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time filing and pursuing requests. He summarized his experience the other day by saying, "It was so completely unproductive, and so darn expensive that there wasn't any point to it." He has long since returned to other duties, and we have, in his words, "dropped the whole thing as a fruitless exercise." As of today, we have not even received the courtesy of status reports on requests that have been pending for 18 months or more.

In short, our experience to the present day under the Freedom of Information Act has been one of frustration and disappointment. To the extent the Act was designed to "lift the veil of secrecy" described by President Nixon,

we can only conclude that it has failed.

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In our view, this experience has somber implications for a democratic society. Accordingly, we applaud the fact that Congress is considering amending the Freedom of Information Act in an effort to insure that it comes closer to accomplishing its original aims. In particular, we are pleased with the thrust of H.R. 12004. We believe that overclassification of information by the government approaches the level of the scandalous. For example, it has recently become public knowledge that Secretary of Defense Laird told President Nixon in June 1971 that 98% of the Pentagon Papers could have

been declassified. Accordingly, we believe the concept of the appointment of a Classification Review Commission is a most useful one. And we are pleased that nothing proposed in the legislation attempts to restrict the press in any manner, either directly or indirectly, in its efforts to inform the public. For while we believe that a more rational system for the classification of documents is desirable, you will understand, of course, that as responsible publishers we must continue to make our own decisions what to print.

However, we do have certain reservations with respect to H.R. 12004 which I should like to share with you. Our first concern is a matter of omission.

The bill establishes a Classification Review Commission. Any congressional body or the Comptroller General may request the Commission to order the transmittal of classified material from an executive agency, and the Commission is given the power to enforce its order by subpoena. Should the Commission turn down a request for the transmission of classified material, Congress and/or the Comptroller General are entitled to take the matter to court.

But private citizens, such as The Times, are given far less protection. It is true that the Commission -- upon the vote of three of its nine members -- is required to investigate citizens' allegations of improper classification

and publish reports of its findings. But private citizens are not granted court review of adverse Commission decisions.

Under current law /Environmental Protection Agency v. Mink, 410 U.S. 73, (1973) 7, private citizens have no right to judicial review challenging, under the Freedom of Information Act, the improper classification of information. We were pleased to see the overwhelming vote of the House on March 14th to correct this situation, and we believe provision for such judicial review should be included in any new amendments to the Freedom of Information Act.



Moreover, we believe there should be judicial review of Commission decisions. Regulatory commissions, no matter how appointed, too easily develop too-close relationships with those they are supposed to regulate. We think it imperative that the Classification Review Commission be aware that its decisions may be overturned in court unless there is substantial evidence on the record to justify them.

There is another troublesome omission in the bill as drafted. Suppose the Commission does agree with a citizen that a certain classification was illegal. It cannot issue an order to the offending agency; it is merely authorized to transmit

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its findings to the Attorney General.

In view of that officer's position

within the executive branch, we consider

this a most inadequate means of enforce-

ment. If the Commission were granted

the right to issue orders in all cases,

then any recalcitrance on the part of an

executive agency could be settled in

court. In our view, one lesson of recent

years is that there is a real danger that

if enforcement is left in the hands of

the executive branch, even acknowledged

rights of citizens will be left without

vindication.

The proposed grant of subpoena

power to the Commission raises another

question. As we read the bill, it might

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be argued to be within the Commission's powers for it to subpoena one of our reporters to testify concerning his source of classified information. We assume that the Commission would exercise its power in a manner consistent with the free flow of information under the First Amendment. And we would, of course, defend what we believe to be the First Amendment interests at stake before the Commission, as we do elsewhere.

I referred earlier to the continuing bureaucratic obstacles we have thus far encountered in attempting to use the Freedom of Information Act so as to permit us better to inform the public. Many of these roadblocks are dealt with

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in the March 14th legislation, whose passage into law we would consider an important advance in this area.

One problem not dealt with, however, is that the existing Executive Order makes it easy for an agency to deny a request because, in its judgment, filling the request would involve an "unreasonable" amount of work. As the list I have submitted shows, The Times has been the victim of such a refusal. We do not seek to impose an excessive burden on the government. But we would suggest that -- if the individual departments are really to be the appropriate judges of this matter -- they must comprehend that they are only doing something which the law requires.

CONCLUSION

Having said all this, I hasten to re-affirm that The Times is in favor of legislation that seeks to break the bureaucratic logjam that has thus far prevented the public from benefiting, as had been hoped, under the Freedom of Information Act. We commend you for your consideration of legislation such as H.R. 12004.

You all may recall Justice Black's conclusion in the Pentagon Papers case that under the First Amendment, "the press was protected so that it could bare the secrets of Government and inform the people." To which I add the thought that if there were far fewer "secrets of Government" all of us would be far better served.

Statement by

HARDING F. BANCROFT  
Executive Vice President, The New York Times

before the

SENATE SUBCOMMITTEES ON  
INTERGOVERNMENTAL RELATIONS,  
SEPARATION OF POWERS,  
ADMINISTRATIVE PRACTICES AND PROCEDURE

Wednesday, April 11, 1973

INTRODUCTION

I am glad to appear today in response to your request for a report on the experience of The New York Times under the Freedom of Information Act, particularly our experience since the issuance in March 1972 of Executive Order 11652. In the light of that experience, I am delighted to give our comments on S. 1142, introduced by Senator Muskie, proposing amendments to the Freedom of Information Act.

When the Freedom of Information Act was signed on July 4, 1966, President Johnson stated that it sprang "from one of our most essential principles: A Democracy works best when the people have all the information that the security of the nation permits". "No one" he said "should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest."

And the Attorney General in a memorandum to assist government agencies in developing a uniform and constructive implementation of the law said that it "imposes on the executive branch an affirmative obligation to adopt new standards and practices for publication and availability of information." "It leaves no doubt", he said, "that disclosure is a transcendent goal."

In the years since the act became effective on July 4, 1967, that transcendent goal has not been realized.

New York Times reporters have had great difficulty in securing non-sensitive information to which the public is clearly entitled. We have met official resistance in respect to such matters as the number of medals awarded to Generals in the Vietnam War, the identity of contractors found to have made excessive profits by the Renegotiation Board, reports of government tests on consumer products, and so on.

When, however, Executive Order 11652 was issued by President Nixon, it created new hopes. As the President noted in his accompanying statement, it was "designed to lift the veil of secrecy which now enshrouds altogether too many papers written by employees of the Federal establishment". In what he called "a critically important shift," the order put the burden on those who wish to preserve secrecy

rather than those seeking declassification. And the President appeared emphatic in his intention to make the new procedures work. "The full force of my office", he said, "has been committed to this endeavor".

But now, on the basis of The New York Times experience over the 13 months since the executive order was issued, I must give you a weary and negative report. If the veil of secrecy has been lifted at all, only a thin sliver of light now shows through. If the "critically important shift" in the burden for preserving secrecy has taken place, that is barely evident. There is no outward or visible sign that the President has, in fact, committed the full force of his office to this task. If he has, it has fallen on a disingenuous bureaucracy and the intolerable abuses of the security system that the President spoke of have not been eliminated.

In quick summary, since June 1972 we have formally requested declassification of 51 sets of documents, all at least 10 years old, and many going back 25 or more years. In four cases, we succeeded without appeal, one declassification coming just a week ago after almost 10 months of effort on our part. In another case, we succeeded only after an appeal and then a re-appeal. Another request remains on appeal, still another is pending original decision.



That gives us a batting average so far of 5 for 49, or .102 — not good enough even for the minor leagues. And, this meager 10 per cent success record has come only after persistent efforts by The Times, efforts which are beyond the means of many smaller news organizations, let alone individual scholars and members of the public. We have come to conclude, as a result, that the President's emphatic order is not enough, and that in declassification as in the American League, what is now necessary is a Designated Pinch Hitter, a compelling legislative response.

THE TIMES EXPERIENCE UNDER E.O. 11652

Executive Order 11652 called for the automatic declassification of most documents within no more than 10 years. Some materials could be specifically exempted, but even these were subjected to mandatory review if requested by a member of the public.

The Times sought to respond to this opportunity in a serious fashion. On Monday, June 5, four days after the executive order took effect, we initiated our first of a series of declassification requests which amounted in all to 51. These were directed to five agencies, on topics ranging from United States relations with the French Resistance in World War II, to the Bay of Pigs.

It is necessary to recount only a few of the responses to indicate why we have come to feel almost total frustration now that we have gone from the President's commendable language to the bureaucracy's dissembling or dilatory actions.

The precise nature of our experience has varied from agency to agency, but with the same general result. After numerous exchanges of calls and letters, usually over months, the buck is passed to another agency; or reasonable conditions in the executive order are used to block declassification without explanation; or expensive charges are proposed; or requests are denied, with an appeal suggested, though the reasons for denial — and hence for the appeal — are refused.

One notable instance began on June 5 when we asked the Department of Defense for the comments of the Joint Chiefs of Staff on the Bay of Pigs operation. In a report dated July 24, the Department responded: "The JCS papers can be identified and placed under review." So far, so good. But then on August 8, we were told, "It turns out that the papers in question are in fact comments on documents prepared by another agency and, therefore, your request cannot be handled as a review separate from the basic collection of documents which, as you know, is under the control of the Central Intelligence Agency." (Emphasis supplied).

We responded to Defense (protesting "agile side-stepping and backpedaling") and, on August 9, made a new formal request to CIA for the documents. Having received no response, we wrote again on September 6, specifying particular interest in the JCS comments. On September 25, CIA replied that it could not meet our request, the reasons given were a bureaucratic tour de force.

For one thing, CIA wrote, "we do not hold a specific group of documents formally identified as 'the basic collection'.". Second, while the agency acknowledged having a large volume of documents relating to the Bay of Pigs, "your request does not fulfill the requirement of sufficient particularity to fall within the Executive Order." We pointed out that "...identification of specific documents could be made only by employees of CIA, the National Security Council, or the Departments of Defense and State. Merely to cite a lack of particularity... is to seize a technicality to frustrate the Executive Order and ignore the accompanying statement by the President."

Further, even if we had been able to divine the identity of specific, highly classified documents more than 12 years old as a pre-condition of their being declassified, CIA erected yet another obstacle. In the same September 25 letter, CIA wrote that intertwined among the documents were "a large number of references to or reflections of intelligence sources and methods which could be jeopardized by release of these documents". Thus, CIA argued that the papers fell within an exemption in the executive order protecting intelligence sources and methods. To separate out still sensitive material, CIA wrote, "is simply not feasible".

In other words, Defense was prepared to review the material for declassification, but then backed off because it was in CIA's "basic collection". CIA said it had no "basic collection".

Nor, could it identify, among the files it did have, documents that Defense could identify. And even if it could identify the documents, CIA said it was sure — even without any review — that they could not be declassified.

Finally, at the end of the letter, CIA wrote that it had consulted with Defense as to the JCS comments on the Bay of Pigs. In this specific instance, neither insufficient particularity nor jeopardizing intelligence sources could credibly be cited as reasons for refusing. But, in the absence of valid reason for refusal, we were simply refused without a reason. The CIA letter merely said, "We jointly agree that the JCS documents cannot be released." Only since we appealed this multi-layered denial has CIA relented somewhat. In a letter received just last week, the agency backed off its claim that our request lacked particularity. Now, on direction of the appeals committee, the agency says it will, at least, conduct a complete review.

We had different frustrations with the Department of State, to which we sent requests for 31 documents. At length, under some prodding from the National Security Council staff, the Department attempted more seriously than others to be constructive and helpful. Three of our five successes involved the State Department.

But even before this meager achievement, we were subjected to a remarkable exercise. On June 27, we received a short,

blanket denial of the 31 requests previously made on the grounds of insufficient particularity. Then, the NSC staff urged State to make at least a gesture of good faith compliance -- if not with The Times requests, then at least with the President's order. State subsequently offered a new response. Yes, the Department wrote us, it could search for the information we requested, but The Times would have to foot the bill. Not the bill for the copying, which would make sense, but a bill estimated by the Department in the thousands of dollars -- for searching out the documents themselves, which makes no sense. Aside from the amounts involved which could be prohibitive for The Times, and totally out of the question for smaller organizations, scholars, or private citizens, there are other practical considerations. Even if we agreed in advance to pay open-ended fees for searching out the relevant documents, the Department could not promise that any of them would, in fact, be declassified and made available to us.

And even after the payment of these fees, and even if the documents were declassified, there was no way in the world for us to know if they were worth reporting. I can readily understand the exasperation that last June prompted Max Frankel, then our Washington Bureau chief, in a letter to the head of Declassification at the White House, to describe this all as "research roulette".

Ultimately, we paid \$124 in research assessments and \$70 in copying charges for the three sets of documents finally declassified

by the State Department. (Among the copies charged for were European newspaper clippings that had been classified). None of the documents turned out to be newsworthy.

The single newsworthy success we have achieved so far concerned the Gaither Report on the asserted missile gap of the last 1950s. Our original request to Defense was re-directed to the National Security Council. At length, the NSC rejected the request without specifying a reason. We appealed to the Inter-Agency Review Committee on October 22. Three months later, the committee acted favorably on our request.

The fifth success should not, perhaps, be described as a success at all. It concerned a request to several agencies for documents relating to the exchange of Rudolph Abel for Francis Gary Powers. Last week, almost seven months after our request, we received a set of relevant papers from the Department of Justice. None of these appear to be newsworthy.

The instances I have cited so far illustrate how agencies have used (1) delay; (2) "insufficient particularity"; (3) protecting intelligence sources; and (4) costs, as obstacles to declassification and disclosure. The Defense Department provided us with yet another. One of our original requests to that Department was for the answers to the "100 questions" that Secretary Robert McNamara issued at the start

of his tenure. In response to our request, the Department said there was not, "to the best of our knowledge", any documentary assessment of the answers. "To prepare a summary at this time would involve an unreasonable amount of work", the Department wrote. Perhaps so, but it would have been more credible had the Department even tried to provide answers to some of the questions. As it stands, the Defense response invites the suspicion that the Department regards punctual declassification as too much trouble; that conforming to the strong views of the President is too much trouble; that informing the public is too much trouble.

It ought to be sufficient, in response to statements like "an unreasonable amount of work" or to the other bureaucratic evasions we have experienced, to cite the following words:

"The many abuses of the security system can no longer be tolerated. Fundamental to our way of life is the belief that when information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and —eventually— incapable of determining their own destinies."

Those words come from President Nixon's statement accompanying the Executive Order. They reflect an effort to strike a reasonable balance

between the Government's need for confidentiality and the public's right to be informed. Yet if after the application of what the President called "the full force of my office", the persistent efforts of a major newspaper can produce a production average of only .102, then we and the people of this country must look to Congress and the courts.

S-1142

Given these problems and the sad and repeated history of unresponsiveness by the governmental functionaries from whom documents have been sought under the Freedom of Information Act, we are especially pleased at the introduction of S-1142 by Senator Muskie and others. We believe that these amendments will have a salutary effect on the practical operation of the Act and will increase although not guarantee the ability of the press to obtain governmental information which should properly be in the hands of the public.

Without specifically reviewing each of the changes which would be affected by the adoption of S-1142, I think it may be useful to consider some of them that we think would be especially significant. One of these is the proposed amendment to Section 552A(3) which would, in effect, substitute the words "records which are reasonably described" for "identifiable records". This would help to eliminate one of the excuses which unwilling officials have repeatedly used to prevent disclosure. One problem, obviously, that a journalist has in seeking



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official records from governmental agencies is knowing precisely what records the agency has. This was exemplified in the Bay of Pigs request. At least one of CIA's excuses in that case would be much less likely to be sustained under the new proposed language.

Secondly, the amendment expressly providing that, in a review by the Court, the Court has the power to examine the contents of any agency records in camera in order to determine if such records or any part thereof should be withheld under one of the statutory exemptions, is a particularly important one.

This amendment would meet and change the decision of the Supreme Court in the recent ruling in Environmental Protection Agency v. Mink, decided in January of this year. In that case, the Court in disallowing in camera judicial inspection of classified documents relating to possible environmental dangers of the Gannikin atomic test in the Aleutians construed most narrowly the exemptions contained in the Freedom of Information Act. Justice Stewart observed in his concurring opinion in that case that Congress:

"has ordained unquestioning deference to the Executive's use of the 'secret' stamp. "

Indeed, Justice Stewart observed that Congress had:

"built into the Freedom of Information Act an exemption that provides no means to question an executive's decision

to stamp a document 'secret', however cynical, myopic or even corrupt that decision might have been."

We think the Freedom of Information Act, if it is worthy of its name or declared purposes, should not be susceptible to such an interpretation. It is of fundamental importance that a court have the power to review the contents of records sought by newspaper reporters and that courts not be bound by a security classification placed upon documents up to 30 years ago by a cautious civil servant, — let alone a "cynical, myopic or even corrupt" one. We urge the Congress to adopt legislation making clear that courts are free and even bound to examine the correctness of the classifications, at the time the demand for the document is made. That is the important time. The judicial eye can see with clearer vision than a reluctant bureaucrat that the need for secrecy, even if real in one year may be non-existent the next; and that the public is entitled to be aware of recent as well as ancient history.

This amendment, it seems to us, is also supported by Executive Order 11652, which calls for the separation of documents into classified and unclassified portions where that is practicable. It has been our experience that such a separation is practicable in the vast majority of cases, and that one of the dismaying features of the current classification system is that documents containing 95% of

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material which should never have been classified at all are classified "top secret" or "secret" because of a reference or a single sentence or paragraph contained in the document.

Similarly, the provisions of the proposed amendments establishing effective and binding time limits for agency determination and appeals will be most helpful in ensuring that prolonged delays of the type that we have experienced will not frustrate the purposes of the Act. In the journalistic field, stories that cannot be run when they are newsworthy often cannot be run at all. Reluctant officials are all too aware of this.

We also find most useful and needed the proposed revisions in S-1142 to exemption 7 of the Freedom of Information Act so as to exclude from the exemption certain investigatory records such as scientific data, agency inspection reports relating to health, safety or environmental protection, and records serving as a basis for certain public policy statements of government officials. There is simply no reason for such material to be kept secret.

Approved For Release 2002/01/10 : CIA-RDP76M00527R000700230023-4

TABULATION OF THE NEW YORK TIMES'  
FREEDOM OF INFORMATION  
REQUESTS SINCE EXECUTIVE  
ORDER 11652

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DEPARTMENT OF DEFENSE

9 requests: Of the 9 requests, 3 were denied. CIA-RDP76M00527R000700230023-4  
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 involved a declassification by The Archivist which coincided with a New York Times request, but was not a Department of Defense release for The Times' benefit.

<u>Type of Information Requested</u>	<u>Date of NYT Request</u>	<u>Date of Agency Response</u>	<u>Nature of Response</u>
1) Joint Chiefs of Staff studies, and record of National Security discussion and Administration debates on Bay of Pigs (1961)	6/5/72	6/8/72	Acknowledgment; please acknowledge if NYT willing to pay
	7/21/72		NYT will pay
		7/24/72	Progress report on all 9 items; JCS can be reviewed but try CIA for NSC discussions.
		8/8/72	NSC and JCS papers, now turns out, tied to CIA--ask them.
	8/10/72		NYT says don't pass buck to CIA. now on appeal, especially JCS comments.
2) Accounts of the negotiations for release of RB-47 fliers by the Soviet Union (shot down 7/1/60; released 1/25/61)	6/5/72	7/24/72	Referred to State. (see State chart for final disposition)
3) "White" contingency plans for WW II	6/5/72	7/24/72 8/8/72 8/25/72	Can probably be reviewed. Still pending. released--see Archivist.
4) McNamara's 100 Questions, and any documentary assessment (3/1/61)	6/5/72	7/24/72	denied; request too general already published in military journal; any further summary would involve "unreasonable amount of work"

DEPARTMENT OF DEFENSE (continued)

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<u>Type of Information Requested</u>	<u>Date of NYT Request</u>	<u>Date of Agency Response</u>	<u>Nature of Response</u>
5) Intelligence reports on Chinese troop movements prior to entry into Korean war (11/1/50)	6/5/72	7/24/72	<u>denied</u> ; request too general; review 2 books where subject "extensively discussed" then rephrase inquiry.
6) Gaither Report on so-called "missile gap"	6/5/72	7/24/72	White House control (see NSC chart for final disposition).
7) Pentagon materials bearing on F-111 and contract awarded to General Dynamics	6/5/72	7/24/72	<u>denied</u> ; too vague-- review McClellan hearings for "greater particularity".
8) Reports on U.S. involvement with Italian underground in Sicily and on the Italian mainland during WWII	6/5/72	7/14/72	Referred to CIA.
9) Reports on U. S. involvement with French underground during WWII.	6/5/72	7/24/72	Referred to CIA.

#### DEPARTMENT OF STATE

31 requests: Of the 31 requests, 28 were responded to (plus a partial response to Abel-Powers, to which Justice was more directly responsive). The New York Times suspended most of the remaining 28 requests pending resolution of the cost problem. The Times paid \$194 for the three requests that were granted.

- 1) Early 1960 assessments by CIA, State, and NSC re Krushchev's speech about "wars of national liberation" and the bearing on U. S. foreign policy.
- 2) State reports on Chancellor Konrad Adenauer's visit to Moscow.
- 3) All documents, including diplomatic correspondence and cables, leading up to U. S. Government efforts to obtain the release from jail of Rudolph Abel, the convicted Soviet spy, in exchange for Gary F. Powers (2/10/62).
- 4) U. S.-Yugoslav relations (1948):
  - a) U. S. embassy reports to State early in 1948 indicating serious difficulties between the Yugoslav and Soviet Communist parties and governments.
  - b) U. S. embassy recommendations.
  - c) Harriman-Tito conversations in Yugoslavia which led to formulation of U. S. policy of supporting Yugoslavia.
  - d) Eugene Black-Tito conversations which led to World Bank support of Yugoslavia.
  - e) U. S. approaches to the British, French, and Italian governments to join in helping Yugoslavia to preserve her independence through material and political support.
  - f) White House papers relating to the conviction that an independent Communist Yugoslavia would have far-ranging consequences for Soviet monolith control of Eastern Europe and the Western Communist parties.
- 5) Account of negotiations by the Kennedy administration and James Donovan with Castro for the "ransom" of prisoners taken at the Bay of Pigs (11-12-62),

DEPARTMENT OF STATE (continued)

- 6) Reports bearing on U. S. involvement in the assassination of Trujillo (5/30/61).
- 7) State reports on the founding and development of the Free University in Berlin.
- 8) The U. S. lend-lease agreement with the Soviet Union negotiated by A. Harriman; also the lists of military, industrial, and raw materials delivered to the USSR under the agreement (1942-43).
- 9) M. Boerner's reports to State and the USIA on the reestablishment of a free press in West Germany during the period when John J. McCloy was High Commissioner (1946 on).
- 10) Reports to State and Labor Departments on how Michael Harris (AFL-CIO) and others attached to the U. S. occupation reopened the coal mines in the Ruhr with huge supplies of foodstuffs supplied by the U. S. Army (1946 on--).
- 11) State and CIA reports on the East Berlin uprising (1953).
- 12) The Thayer reports on the use of the Zittelmann Strasse house in Bad Godesberg in the early years after the Americans arrived in that town.
- 13) DOD and State reports on U. S. relations with the French resistance underground during World War II.
- 14) State reports on U. S. relations with the Italian resistance underground in Sicily and on the Italian mainland during World War II.
- 15) State and Labor department reports concerning the resurrection of the postwar Democratic West German trade unions. Specifically, the reports by Meyer Bernstein of the International Department of the AFL-CIO, who was attached to the U. S. Consulate in Duesseldorf from where he searched out Democratic German leaders and helped resurrect the German Trade Union Federation as we know it today.
- 16) State papers relating to Secretary of State Byrne's Stuttgart speech which, if it had been accepted by the Soviets, might have changed the course of postwar German history (1946?).



DEPARTMENT OF STATE (continued)

- 17) Inside accounts and assessments of JFK's Vienna meeting with Khrushchev (6/61).
- 18) Diplomatic dispatches from Moscow immediately after Stalin's death (3/5/53).
- 19) Assessment of Soviet space program just before Sputnik (10/57).
- 20) U. S. contingency plans during Hungarian crisis (10/56-3/57).
- 21) Copies of Kennedy-Khrushchev correspondence in 1961-62, right up to the mis sile crisis (10/62)
- 22) State reports from Belgrade and Rome embassies on secret relations between Tito and Palmiro Togliatti, the late head of the Italian Communist party, and the latter's development of Communist "polycentrism" in opposition to Soviet control of all Communist parties (1948-49).
- 23) State and CIA papers relating to Tito's decision to close Yugoslavia's frontier with Greece which snuffed out the Greek communist rebellion.
- 24) Papers bearing on U. S. decision to send troops to Lebanon (7/58).
- 25) Accounts of the relations between the White House and U. S. judges leading to the release of several Soviet spies from prison for exchange with the Russians; exchange of Francis Gary Powers for Rudolph Abel (2/10/62); and exchange of Marvin Makinent and Walter Ciszek for Ivan Egorov and wife (10/11/63--but not in 10-year period).
- 26) U. S. contingency plans during Suez crisis (8/56) plus exchanges with British and French leading up to Suez.
- 27) Reports from U. S. ambassador in Havana throughout 1958.
- 28) documents relating to Soviet release of the RB-47 fliers just as JFK took office (1960-61).

DEPARTMENT OF STATE (continued)

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- 29) Cable traffic leading up to Frederick E. Nolting reassignment from Ambassador to Vietnam (8/63).
- 30) State papers relating to the American discovery of New German leadership after Germany's defeat -- such men as Ludwig Erhard, who became the West German economics minister, Carlo Schmidt, the Social Democratic leader, Willy Brandt, etc.
- 31) State and CIA papers relating to how the Italian Communist party's bid for power in the first postwar general election was overcome and the victory of de Gasperi assured.

<u>Type of Information Requested</u>	<u>Date of NYT Request</u>	<u>Date of Agency Response</u>	<u>Nature of Response</u>
	6/5/72		NYT asks for declassification of foregoing 31 items.
		6/27/72	State acknowledgement; need for more "sufficient particularity" to enable identification.
		7/18/72	finished search for Khrushchev documents, now under review. looking for 2 others-- Adenauer, plus Abel-Powers.
		8/14/72	now completed search and review on 2 of the 31, Khrushchev on "wars of national liberation" and Adenauer visit to Moscow. Need more particulars on Khrushchev but <u>Adenauer visit can be released</u> except for part of two cables, one under review, the other one of which some is still classified. Send us

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(cont'd)

DEPARTMENT OF STATE (continued)

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Type of Information Requested

Date of NYT  
Request

Date of  
Agency  
Response

Nature of Response

\$120.80, or just \$56 plus copying cost if you want to come in and review.

8/22/72

State, per phone request from NYT, returns copy of 31 requests.

9/5/72

NYT gives particulars on Khrushchev speech; asks first priority on RB-47 request.

9/6/72

NYT last-gasp request. "From the point of view of the department it strikes me as regrettable that it took from June 6 to Aug. 14 for your people to ask us for the precise date of the Khrushchev speech about wars of national liberation. Given a desire to implement the executive order, I have no doubt that the date could have been discovered ... in five minutes." Reviews bidding with State.

DEPARTMENT OF STATE (continued)

<u>Type of Information Requested</u>	<u>Date of NYT Request</u>	<u>Date of Agency Response</u>	<u>Nature of Response</u>
		9/26/72	State says RB-47 documents will be made available. Will try to make Khrushchev papers available though department view is that two "routine" summary analyses of the speech probably won't be of "much" interest to anyone at this date." NYT already knows that 1949-51 period of Adenauer documents can be made available. Dubious about Abel. Research leads on others. JFK-Khrushchev Correspondence has some declassification already..
		10/2/72	Yes, <u>summary analysis of Khrushchev Natl. lib. speech will be made available.</u>

## CENTRAL INTELLIGENCE AGENCY

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<u>Type of Information Requested</u>	<u>Date of NYT Request</u>	<u>Date of Agency Response</u>	<u>Nature of Response</u>
9 requests: Of the 9 requests, 6 were refused, 1 was directed to The Department of State, 1 to The National Security Council, and 1 to Justice. Of the 6 CIA refusals, 5 involved documents prior to 1950.	6/5/72	6/12/72	CIA acknowledgment.
1) Minutes of the "303" committee --the White House inter-agency body supervising CIA (and named for the NSC orders creating them, e.g. NSM 303)		6/26/72	Request denied; not CIA documents.
2) Intelligence reports on Chinese troop movements just before Korean War (11/1/50)		6/26/72	Request lacks "sufficient particularity".
		8/23/72	Request denied, after more details provided by NYT.
3) Memoranda or reports providing basic justification for U.S.-Laos involvement (1961-62).		6/26/72	Request lacks "Sufficient particularity".
		8/23/72	Request denied, although further details were given.
4) Early 1960 assessments by CIA, State, and NSC re Khrushchev's speech about "Wars of National Liberation" and its bearing on U.S. foreign policy.		6/26/72	unable to locate. (see State chart for final disposition).
5) State/CIA papers re Tito's decision to close Yugoslavia's frontier with Greece and termination of Greek civil war.		6/26/72	Request lacks "sufficient particularity."
		8/23/72	Request denied, though additional material supplied by NYT.
6) Reports on U.S. involvement in Trujillo's assassination (5/30/61)		6/26/72	Unable to locate.

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CIA (cont'd)

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<u>Type of Information Requested</u>	<u>Date of NYT Request</u>	<u>Date of Agency Response</u>	<u>Nature of Response</u>
	7/31/72		NYT supplies more details on items 2, 3, and 5 above.
		8/4/72	CIA says "We're working on it."
	8/7/72		NYT adds 3 additional requests:
7) Reports on U.S. relations with French underground during World War II.		9/27/72	<u>Request denied.</u>
8) Reports on U.S. relations with Italian underground during World War II.		9/27/72	<u>Request denied.</u>
9) Reports to CIA on East Berlin uprising and riots (1953).		9/27/72	<u>Request denied.</u>
		8/9/72	CIA acknowledgement of 8/7/72 NYT letter.
		8/8/72	DOD says in another letter to try CIA for JCS papers re Bay of Pigs.
	8/9/72		NYT asks CIA for "basic collection of documents" on Bay of Pigs.
		8/10/72	CIA says "We're working on it."
	8/10/72		NYT replies to DOD that government's aim seems to be evasion.

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<u>Type of Information Requested</u>	<u>Date of NYT Request</u>	<u>Date of Agency Response</u>	<u>Nature of Response</u>
		8/23/72	3 requests in 7/31/72 NYT letter--items 2, 3, and 5--after review, <u>are denied</u> . CIA suggests appeal.
	8/28/72		NYT requests reasons for denial, in order to appeal.
	9/6/72		NYT requests <u>just</u> JCS papers; no longer <u>all</u> Bay of Pigs documents.
	9/7/72		NYT writes NSC official advising of last-gasp effort re JCS papers, Abel-Powers, and RB-47.
		9/25/72	Bay of Pigs request, says CIA, doesn't conform with "sufficient particularity" requirement; are intelligence documents, overlap with non-classified material; and segregation of two "not feasible"; after consultation with DOD, NSC papers can't be released.
		9/27/72	Request denied for 3 <u>additional requests</u> in NYT letter of 8/7/72; appeal suggested.

CIA (cont'd)

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<u>Type of Information Requested</u>	<u>Date of NYT Request</u>	<u>Date of Agency Response</u>	<u>Nature of Response</u>
	3/8/73		<u>Appeal of denial of Bay of Pigs</u> , especially JCS part.
	3/8/73		separate letter asking for declassification of CIA material on Abel-Powers swap (see also Justice request of 9/6/72).
		3/14/73	CIA acknowledgment of Abel-Powers 3/8 letter; says if no answer forth- coming in 60 days, appeal.

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<u>Type of Information Requested</u>	<u>Date of NYT Request</u>	<u>Date of Agency Response</u>	<u>Nature of Response</u>
2 request: Of the two requests, The New York Times finally was granted the first after appeal and reappeal. The second request is still pending.			
	6/21/72		Max Frankel, NYT's Washington correspondent and bureau chief, protests.
1) Gaither Report on the so-called "missile gap" (11/57)	9/7/72		NYT last-gasp effort to get RB-47, Bay of Pigs collection, Abel-Powers documents.
		10/13/72	<u>NSC refuses to declassify Gaither Report.</u>
	10/23/72		<u>NYT appeals NSC refusal to interagency committee.</u>
		11/6/72	Committee acknowledges NYT appeal.
2) Technological Capabilities Panel (TCP) report chaired by James R. Killian in 1954 or 1955 and implementative of the Gaither Report.	3/2/73		NYT asks for Killian TCP report. Still pending.

DEPARTMENT OF JUSTICE

1 request: After a delay of more than 7 months, the one New York Times request was granted.

<u>Type of Information Requested</u>	<u>Date of NYT Request</u>	<u>Date of Agency Response</u>	<u>Nature of Response</u>
1) All documents, including diplomatic correspondence and cables, leading up to U.S. government efforts to obtain the release from jail of Rudolph Abel, the convicted Soviet spy, in exchange for Gary F. Powers (2/10/62).	9/6/72	10/6/72	Acknowledgment, & under review.
	3/8/72		NYT requests Abel-Powers from CIA, which it says it now learns is source of documents.
		3/14/72	CIA acknowledges 3/8/72 letter. Says if no answer in 60 days, well, then, appeal.
		3/30/73	<u>Justice releases the papers.</u>